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MAR 12 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 12, 1998

By Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Petition for Rule Making to Change Community of License for
Station KAYW(FM)
Meeker, CO

Dear Ms. Salas:

Enclosed for filing on behalf of Western Slope Communications, L.L.C. ("Western Slope"), the permittee of Station KAYW(FM), Meeker, CO (the "Station") are an original and four copies of a Petition for Rule Making to amend the Federal Communication Commission's FM Table of Allotments by changing the community of license for the Station. We have been advised by the FCC that no filing fee is due unless this petition is granted and Western Slope submits an application to modify its construction permit. Please address any questions on this petition to the undersigned.

Very truly yours,



Paige S. Anderson, Esq.

Enclosures

cc: Roy J. Stewart, Chief, Mass Media Bureau
John A. Karousos, Chief, Allocations Branch

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

RECEIVED

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Meeker and Palisade, Colorado))

MM Docket No.
RM-

MAR 12 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR RULE MAKING

Western Slope Communications, L.L.C. ("Western Slope"), permittee of Station KAYW(FM), Meeker, Colorado, hereby petitions the Federal Communications Commission (the "Commission") to amend its FM Table of Allotments, 47 C.F.R. Section 73.202(b)(1996), by reallocating FM channel 251C from Meeker, Colorado to Palisade, Colorado. Western Slope also requests that the Commission modify the construction permit for Station KAYW(FM) to reflect this change.

On October 28, 1997, the Commission issued a construction permit to Western Slope to construct and operate a Class C FM radio station in Meeker, Colorado (the "Station"). An engineering analysis performed for Western Slope, however, has concluded that there is no transmitting tower from which the Station can economically provide coverage to its community of license.¹ While a transmitter site for a Class C facility often can be located anywhere within 50 km of the targeted community, Meeker is located in a deep valley which runs from east to west and is rimmed by mountains. The unique location and terrain of the community severely limits the possible transmitter sites from which city grade coverage of Meeker can be provided to sites located directly east or west of Meeker.² Any such siting configuration would, however, simultaneously exclude signal coverage for most other

¹ See Exhibit E, Engineering Statement by Timothy Cutforth, P.E. ("Engineering Statement") at 1.

² Engineering Statement at 1.

populations in the region.³ This result would deny Station KAYW(FM) of the population and business base necessary for its economic viability. Accordingly, Western Slope is requesting that the Commission initiate a rule making proceeding to reallocate channel 251C from Meeker to Palisade, Colorado, and reserve this reallocated channel for Western Slope.⁴ The attached Engineering Statement establishes that there are no existing unused allocations in Palisade or any pending rule making proceedings for a Class C assignment to Palisade.⁵

The Commission has stated that when considering a petition to amend the Table of Allotments, it will compare the proposed allotment plan to the existing state of allotments for the community involved.⁶ The Commission will adopt the reallocation plan if the proposed allotment would result in a net service benefit to the communities involved (i.e., if the plan would result in a preferential arrangement of allotments).⁷ The Commission has defined its FM allotment priorities as: 1) first full-time aural service; 2) second full-time aural service; 3) first local service; and 4) public interest matters.⁸

³ *Id.*

⁴ Section 1.420(i) of the Commission's rules permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file a competing expression of interest where the requested allotment would be mutually exclusive with the existing authorization. Western Slope's current channel allocation in Meeker is mutually exclusive with the requested reallocation to Palisade. Accordingly, if channel 251 is reallocated to Palisade, it can be reserved for Western Slope's Station KAYW(FM). *See also Amendment of Section 73.606(b) Table of Allotments, TV Broadcast Stations (San Bernardino and Long Beach, California)*, MM Docket No. 97-170, Report & Order, DA 98-154 at ¶ 2 (released January 30, 1998).

⁵ *See* Engineering Statement at 1.

⁶ *Modification of FM and TV Authorizations to Specify a New Community of License, Report and Order*, 4 F.C.C. Rcd 4870, 4873 (1989) ("New Community"), *recon. granted in part*, 5 F.C.C. Rcd 7094 (1990).

⁷ *New Community* at 4873.

⁸ *See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Mt. Juliet and Belle Meade, Tennessee)*, 12 F.C.C. Rcd 10481, 10482 (Allocations Branch 1997).

The reallocation of channel 251 from Meeker to Palisade will advance the Commission's FM allotment priorities and will result in a preferential arrangement of allotments. Specifically, the proposed reallocation will advance the Commission's third priority by providing Palisade with its first local audio transmission service. Although channel 251 also would provide the first local audio transmission service in Meeker, it will not harm the public interest if channel 251 is reallocated to Palisade.⁹ The Commission has stated that it will not permit a station to change its community of license "if the effect would be to deprive a community of an *existing* service representing its only local transmission service."¹⁰ However, this prohibition is not triggered in the instance case since Station KAYW(FM) would provide a first local audio service whether it was allocated to Meeker or Palisade. Moreover, existing service is not being provided to Meeker by Station KAYW(FM) since the facility has not yet been constructed. Therefore, the reallocation of this channel to Palisade would not deprive anyone of an *existing* service.

Notably, neither of the Commission's first two allocation priorities are relevant in the instant analysis since no white or grey areas would be served by either the Meeker station or the Palisade facility. The service areas of both a Meeker and Palisade Class C facility already are fully encompassed by the 0.5 mV/m contour of Station KRAI, Craig, Colorado.¹¹ In addition, Stations KKGM and KZKS, Grand Junction, Colorado; and Stations KRGS and KZKS, Rifle, Colorado each provide service which covers most of the possible KAYW(FM) service areas in Meeker and Palisade, while at least 25 other stations cover part of these two service areas.¹²

⁹ A review of the Commission's records indicates that no AM or FM stations, commercial or non-commercial, currently are licensed to either Meeker (except Station KAYW(FM)) or Palisade, Colorado.

¹⁰ *New Community* at 4874 (emphasis added).

¹¹ Engineering Statement at 2 - 3.

¹² *Id.*

Furthermore, the proposed change would provide a greater benefit to the public because the reallocation of channel 251C to Palisade will enable Station KAYW(FM) to serve a larger segment of the local population. Meeker, which is located in Rio Blanco County, Colorado, has a population of 2098.¹³ Palisade is located in Mesa County and, according to 1990 census figures, has 1871 residents.¹⁴ The two communities are geographically located relatively close together, but they are separate and distinct. Based on 1990 Census figures, Palisade is not an urbanized area, however, it is an independent, thriving and incorporated community which has its own bank and post office.¹⁵ According to the local Chamber of Commerce, Palisade also has an elementary school, a middle and a high school, a local newspaper, a police department and numerous businesses, which revolve around the community's fruit and wine industries.¹⁶ Although Palisade has a smaller actual population than Meeker, more people reside in the area surrounding Palisade than the area surrounding Meeker.¹⁷ In fact, as presently authorized, Station KAYW(FM) would serve 25,542 people within the 1 mV/m contour. By contrast, the reallocated station at the proposed reference coordinates would serve 135,491 people within the 1 mV/m primary coverage contour.¹⁸ Therefore, reallocating the channel as requested would actually permit Station KAYW(FM) to provide service to significantly more people.

¹³ RAND MCNALLY 1992 COMMERCIAL ATLAS & MARKETING GUIDE ("RAND MCNALLY") at 277.

¹⁴ *Id.* See also Engineering Statement at page 1. The Palisade Chamber of Commerce, however, estimates the 1996 population at 2,500 people.

¹⁵ RAND MCNALLY at 277.

¹⁶ Palisade's numerous orchards produce peaches, pears and apples. Numerous wineries and vineyards also are located in Palisade. To support these industries, the town holds a peach festival each August and a winefest in September. These activities, which include musical entertainment, are promoted in the local area and attract both residents and tourists.

¹⁷ See Engineering Statement at 1.


¹⁸ *Id.*

As explained above, reallocating channel 251 from Meeker to Palisade will result in a preferential arrangement of allotments and will benefit the public. In addition, the attached engineering statement confirms that there are no technical impediments to this reallocation. *See* Engineering Statement at 2 - 3.

Grant of Western Slope's Petition for Rule Making would advance the Commission's allotment criteria by establishing the first local aural transmission service to Palisade. The grant also will serve the public interest since more people would be able to receive the signal of Station KAYW(FM) if the proposed reallocation is adopted than presently is the case. Accordingly, Western Slope respectfully requests that the Commission issue a Notice of Proposed Rule Making to reallocate FM channel 251 from Meeker to Palisade, Colorado. Further, Western Slope asks that its construction permit for Station KAYW(FM) be modified to reflect this change.

Respectfully submitted,

WESTERN SLOPE COMMUNICATIONS, L.L.C.

By: 
Tom W. Davidson, Esq.
Paige S. Anderson, Esq.
Its Attorneys

AKIN GUMP HAUER STRAUSS & FELD, L.L.P.
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Dated: March 12, 1998

EXHIBIT E

PROPOSED RULEMAKING
WESTERN SLOPE COMMUNICATIONS, INC.
98.1 MHz CH.251C
PALISADE, COLORADO

ENGINEERING STATEMENT

Concerning a Petition for Rulemaking to allocate FM Channel 251C to Palisade, Colorado.

Western Slope Communications, Inc. is the permittee of KAYW authorized to construct Class C facilities on Channel 251 to serve Meeker, Colorado. Western Slope Communications, Inc. herein requests that the FCC move the allocated Channel 251C to Palisade, Colorado, and reserve it for KAYW in order to provide a first local FM service to Palisade.

Meeker is located in a deep valley that runs from east to west and is rimmed with mountains. The unique location of the community of Meeker severely limits the transmitter site locations where city grade coverage of Meeker can be achieved. Although the transmitter site for a Class C facility can often be located anywhere within about 50 km of the community, the unique terrain around Meeker limits this to sites directly east or west of Meeker and excludes coverage to most other population in the region. Palisade, however is located in less severe terrain and transmitter sites over a much wider area can meet the city grade coverage requirement allowing much wider latitude in selecting the transmitter site so as to maximize service to the public.

Vir James Engineers, Broadcast Engineering Consultants, has been retained by the petitioner to determine and show that the above described allocation may be made within the requirements of the FCC Rules and Regulations. There are no existing unused allocations or pending rulemakings for a similar Class C assignment to Palisade as of the date of this statement.

This would be the first local commercial service to Palisade, a city of 1871 population according to the 1990 census. Palisade is not in an urbanized area based on the 1990 Census publication #1990 CPH-2-7.

The presently authorized KAYW would serve 25,542 persons within the 1 mV/m contour whereas the proposed Class C at the reference coordinates would serve 135,491 persons within the 1 mV/m primary coverage contour based on the 1990 census. Therefore the proposed change in city of license would increase service to the public significantly.

PROPOSED RULEMAKING
 WESTERN SLOPE COMMUNICATIONS, INC.
 98.1 MHz CH.251C
 PALISADE, COLORADO

ALLOCATION STUDY

Availability of Channel 251C to Palisade as determined by computer aided study of all existing stations, pending applications, and pending rulemakings within 330 km of the reference site (about 46 km north of Palisade).

Reference Site

NL: 39 deg 31 min 45 sec
 WL: 108 deg 21 min 14 sec

All distances from this site to stations were computed using the tables of FCC rules Section 73.698. All distances are in the metric system.

The separations for the proposed channel assignment are as follows:

Palisade CO Channel 251C Table of Nearest Facilities

CH.	FREQ	COMMUNITY	CALL	SEPARATION	
				ACTUAL	MINIMUM
248C	97.5	NO STATION OR ALLOCATION WITHIN 325 km			
249C3	97.7	ASPEN CO	KSPNALC	135	96
250C	97.9	CORTEZ CO	KISZ	241	241
251C	98.1	COLORADO SPRINGS CO	KKFM	314	290
252C3	98.3	GUNNISON CO	KKYYALC	168	176
253C2	98.5	ROOSEVELT UT	KIFX	160	105
254C	98.7	CORTEZ CO	KRTZ	259	105

There are no FM Channels 10.6 or 10.8 MHz removed from 98.1 MHz so no Intermediate Frequency interference can result from the assignment.

The proposed Channel 251C assignment to Palisade, Colorado meets the separation criteria for assignment as set forth in FCC Section 73.207 as amended to date. In the event that there is alternate interest in serving Meeker, Colorado Channel 233C1 can be assigned without site restriction.

There is no white or grey area served by either the authorized KAYW at Meeker or the proposed allocation to Palisade, Colorado. Both the presently authorized KAYW service area and the proposed Palisade service area are fully

JANUARY 1998

EXHIBIT E-1B

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PROPOSED RULEMAKING
WESTERN SLOPE COMMUNICATIONS, INC.
98.1 MHz CH.251C
PALISADE, COLORADO

encompassed by the 0.5 mV/m contour of KRAI Craig, Colorado. Additionally KKGM Grand Junction, KRGS Rifle, KNZZ Grand Junction, and KZKS Rifle, Colorado each serve most of the two service areas and at least 25 other stations cover part of the two primary service areas.

From this study it has been determined that the Table of FM Allotments, Section 73.202 of the FCC Rules may be amended as follows:

Community	Present	Proposed
Palisade, CO	none	251C
Meeker, CO	251C	none

Such an amendment of the Table of Allotments would be in full compliance with the FCC Rules and Regulations as amended to date.

Respectfully submitted



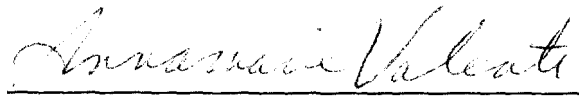
Timothy C. Cutforth P.E.
15 January 1998

CERTIFICATE OF SERVICE

I, Annamarie Valenti, a secretary in the law firm of Akin, Gump, Strauss, Hauer & Feld, L.L.P., do hereby certify that true copies of the foregoing **Petition for Rule Making** were served this 12th day of March, 1998, by hand delivery, to the following:

Roy J. Stewart, Esq.
Chief, Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 314
Washington, D.C. 20554

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
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Annamarie Valenti